

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FEMI KASALI and
SANDRA KASALI

CIVIL ACTION

v.

:
.

HONORABLE ALLAN L. TERESHKO : NO. 01-CV-4043

MEMORANDUM AND ORDER

McLaughlin, J.

March 13, 2002

The plaintiffs in this case, Femi and Sandra Kasali, have brought suit pursuant to 42 U.S.C. §§ 1981, 1983, 1985 and 1988 against the Honorable Allan L. Tereshko of the Philadelphia Court of Common Pleas. The plaintiffs allege that Judge Tereshko unconstitutionally denied them their right to a jury trial in a personal injury action which was pending before him.

Judge Tereshko has moved to dismiss the complaint, arguing, among other things, that the plaintiffs' claims are barred by the Rooker-Feldman doctrine, and that they do not have standing to bring them. The Court will grant the motion to dismiss. The Rooker-Feldman doctrine prevents this Court from adjudicating plaintiffs' specific challenges to Judge Tereshko's actions in their case. To the extent that the plaintiffs seek

forward-looking, generally-applicable relief - a declaratory judgment that Pennsylvania's rules of civil procedure deny litigants jury trials to which they are constitutionally entitled, for example - their claims must be dismissed because they lack standing to bring them.

I. Background

The facts of this case, in the light most favorable to the plaintiffs, are as follows.¹ Plaintiff Femi Kasali was managing a Roy Rogers restaurant when five armed men broke in and, when he was unable to open the safe quickly enough, shot him multiple times. Mr. Kasali filed a personal injury action against Roy Rogers and against Anthony Security, Inc., the firm that provided security to the restaurant where he worked. The case against Roy Rogers was dismissed on preliminary objections because of the exclusivity provisions of Pennsylvania's Workers' Compensation Act. The case against Anthony Security, Inc. was dismissed at the summary judgment stage, because the plaintiff was unable to show that the presence of one, unarmed security

¹ In analyzing a motion to dismiss for lack of subject-matter jurisdiction under Fed. R. Civ. P. 12(b)(1), the court must "treat the allegations of the complaint as true and afford the plaintiff the favorable inferences to be drawn from the complaint." NE Hub Partners, L.P. v. CNG Transmission Corp., 239 F.3d 333, 341 (3d Cir. 2001) (citations omitted).

guard would have prevented the attempted robbery. Both dismissals were upheld on appeal by the Superior Court.

On August 15, **1996**, Mr. Kasali and his wife sued their attorneys in the personal injury action - Edward Chacker, Daniel Siegel and the law firm Gay and Chacker - for legal malpractice. The plaintiffs' demand for a jury trial was perfected that same day. Eventually, the plaintiffs' case was assigned to Judge Tereshko.

On July 13, **1999**, Judge Tereshko heard oral argument on Chacker and Siegel's motion for "reverse bifurcation." Chacker and Siegel argued that Judge Tereshko should first decide whether they had an affirmative defense to the plaintiffs' claims, namely that Roy Rogers and Anthony Security would have been dismissed from the case even if Chacker and Siegel had presented additional arguments or evidence. If the Judge found against Chacker and Siegel on that question, a trial or trials could then be held to determine (1) whether Roy Rogers and Anthony Security would have been held liable for the plaintiffs' injuries if they had not been dismissed from the underlying case and (2) whether Chacker and Siegel were negligent in failing to prevent their dismissal.

Judge Tereshko agreed with Chacker and Siegel and issued an order "that a bifurcated non-jury trial was to commence in Courtroom 243 City Hall on July 27, **1999**," with Judge Tereshko

presiding. Compl. at ¶17. The plaintiffs were confused by the Judge's order; despite the fact that it made reference to a trial, they believed that the Judge would be holding a hearing on a motion on July 27th.

When the plaintiffs appeared in court on July 27th, they "were unclear as to what would transpire and what motions would be heard." Compl. at ¶ 22. Judge Tereshko informed them that he was conducting a non-jury trial on Chacker and Siegel's affirmative defense, and that Chacker and Siegel had the burden of proof. Nonetheless, the plaintiffs did not believe that Judge Tereshko was conducting a trial, because they did not believe that he would deny them their constitutional right to a jury. They surmised that he was hearing oral argument on a motion for summary judgment, despite the fact that none was pending.

Chacker and Siegel proceeded first, calling the plaintiff Femi Kasali as a witness. They then entered several exhibits into evidence and rested their case. The plaintiffs, who were upset by the proceedings, testified on their own behalf.² They attempted to call other witnesses but Judge Tereshko discouraged them, indicating that it was not necessary

² The plaintiffs were also upset by the fact that Judge Tereshko was on a first-name basis with Mr. Chacker, referring to him as "Ed." See Compl. at ¶18.

to have either Chacker or Siegel testify because he would accept deposition testimony. Judge Tereshko also "discouraged other witnesses from testifying, accepting reports and deposition transcripts instead." Compl. at ¶ 27.³

The plaintiffs were "shocked, when, on August 17, 1999, their attorney received a Trial Worksheet signed by [Judge Tereshko], indicating that on July 27, 1999, a non-jury trial was held and that on August 16, 1999, [Judge Tereshko] found in favor [of Chacker and Siegel]." Compl. at ¶ 33. The plaintiffs appealed Judge Tereshko's August 16th order, but their appeal was quashed due to their failure to file post-trial motions. The Pennsylvania Supreme Court denied allocatur.

Mr. and Mrs. Kasali then sued Judge Tereshko in this court. Their first cause of action is for denial of their federal and state rights to a jury trial. To the extent that the denial was authorized by a state procedural rule, they allege that that rule is unconstitutional. The plaintiffs also allege that the state courts have no procedure in place for challenging a denial of the right to a jury trial.

³ The plaintiffs also complain that Judge Tereshko did not decide the motions in limine that were pending, did not rule on whether he was going to allow testimony from certain witnesses and never ruled with regard to certain reports. See Compl. at ¶¶ 29 and 30.

The plaintiffs allege that Judge Tereshko denied them due process, by presiding over the case despite his friendship with Mr. Chacker, by failing to provide the plaintiffs with notice that he was planning to hold a non-jury trial in their case and by failing to indicate under what authority he was proceeding. They allege that they were deprived of a full and fair opportunity to litigate their constitutional and civil rights claims in state court. They also claim that it is a violation of due process that the Pennsylvania courts do not provide an avenue for adjudicating the merits of constitutional claims in cases where the judge assigned refuses to address them.

The plaintiffs further allege that Judge Tereshko denied them their jury rights and their appeal rights because they are African-American, and that this was a violation of the equal protection clause. They allege that other African-Americans and other similarly-situated individuals are likewise denied the opportunity for a jury trial and for an appeal.

Finally, the plaintiffs allege that they were denied their rights to a jury trial in violation of 42 U.S.C. § 1981, and that Judge Tereshko cooperated with Chacker and Siegel, or with their attorney, to deny the plaintiffs their constitutional rights, in violation of 42 U.S.C. § 1985(3).

II. Analysis

The Rooker-Feldman doctrine takes its name from two Supreme Court decisions: Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) and D.C. Ct. App. v. Feldman, 460 U.S. 462 (1983). The doctrine is based on a statutory provision which gives the Supreme Court jurisdiction to review the decisions of the states' highest courts. See 28 U.S.C. § 1257. Section 1257 has been interpreted to mean that only the Supreme Court can review state court judgments. See Rooker, 263 U.S. at 416. The federal district courts do not have jurisdiction over appeals from the decisions of state courts, or over claims which are in essence appeals because they are "inextricably intertwined" with a state court's judgment. Feldman, 460 U.S. at 483 n.16. District courts do have jurisdiction over general challenges to rules, policies or procedures, as long as the general challenge is not inextricably intertwined with a state court's judgment in a particular case. See id. at 483 n.16, 486.

A second doctrine which is implicated in this case is that of judicial immunity. In their individual capacities, judges are immune from suit under Section 1983 for monetary damages, as well as attorney's fees and costs. See 42 U.S.C. § 1988(b); Gallas v. Sup. Ct. of Pa., 211 F.3d 760, 768 (2000). Injunctive relief is also unavailable against judges, "unless a

declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. § 1983. All of the plaintiff's claims for non-declaratory relief against Judge Tereshko in his individual capacity are likely barred by judicial immunity; I will not decide the question, however, because of my conclusion that I lack subject-matter jurisdiction over this case.

The plaintiffs seek, among other relief, (1) "a declaratory judgment that the . . . acts complained of herein are illegal and unconstitutional," (2) "a preliminary and permanent injunction directed to defendant to provide plaintiffs a jury trial," (3) "a permanent injunction directed to defendant that he not issue any further orders in the matter or preside at any further proceedings, including a trial, either jury or non-jury," (4) "an order that an out-of-county Judge other than Philadelphia be assigned all further proceedings, rulings, hearings and trials," (5) "a preliminary and permanent injunction . . . that a jury trial be scheduled" in their case, and (6) compensatory damages. The Rooker-Feldman doctrine bars this Court from granting any of this relief.

A federal court cannot review the actions of a state court in an individual case on behalf of a party to that case, even where it is alleged that the state court's actions were unconstitutional. Federal relief may not be predicated on "a

conviction that the state court was wrong." Parkview Ass'n P'ship v. City of Lebanon, 225 F.3d 321, 325 (3d Cir. 2000) (citations omitted).

This means that this Court cannot even consider the question of whether Judge Tereshko acted properly when he denied the plaintiffs the opportunity to try their case before a jury. This is true even if, in doing so, Judge Tereshko violated the plaintiffs' constitutional rights. See Feldman, 460 U.S. at 486.

The plaintiffs also seek a declaratory judgment that "the [policies, practices and procedures] complained of herein are illegal and unconstitutional" and "that plaintiffs and others similarly situated are entitled to a jury trial when demand is perfected." The plaintiffs' request for a forward-looking, generally-applicable declaratory judgment is not barred by Rooker-Feldman, but they lack standing to seek such relief.⁴

⁴ The Rooker-Feldman doctrine does not prevent the federal courts from hearing general challenges to procedures, as long as they are not inextricably intertwined with a state court's judgment in a particular case. See Feldman, 460 U.S. at 483 n.16, 486. This Court could hear a general challenge to those procedures which are applicable in all cases in which plaintiffs request jury trials, without passing judgment on Judge Tereshko's decisions in the plaintiffs' case. See Centifanti v. Nix, 865 F.2d 1422, 1424 (3d Cir. 1989) (holding that district court could hear general challenge to state's rules for attorney reinstatement as this would not necessitate review of state court's judgment applying those rules and declining to reinstate the plaintiff).

There are three requirements which a plaintiff must meet in order to have standing to sue. See Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 103 (1998). First, the plaintiff must have suffered a concrete harm that is actual or imminent, as opposed to being conjectural or hypothetical. See id. Second, there must be a causal connection between the plaintiff's harm and the defendant's conduct. See id. The third requirement is redressability - the relief requested must be likely to redress the harm suffered by the plaintiff. See id.

Here, the plaintiffs have suffered concrete harm; they were denied the opportunity to try their case before a jury. The required causal connection is also present, because it was Judge Tereshko's decision to bifurcate their case which resulted in their case being decided after a non-jury trial. What the plaintiffs fail to establish is redressability. Their injury would not be redressed - they would not be granted a jury trial - if this Court issued a declaratory judgment that the procedures in place now are unconstitutional.

In order to establish redressability, the plaintiffs would need to allege an ongoing harm, or the real and immediate threat of future harm. See City of Los Angeles v. Lyons, 461 U.S. 95, 111 (1983). For example, in Juidice v. Vail, 430 U.S. 327, 332-333 (1977), the Supreme Court held that the plaintiff

contemnors lacked standing once their period of incarceration was served or their fine paid; they would only have standing if they alleged that they were threatened with further or repeat contempt proceedings.

In their opposition to the motion to dismiss, the plaintiffs allege that "the unconstitutional practices depriving plaintiffs of their trial rights are continuing and have a present adverse effect upon" them, in that they are prevented from pursuing their legal malpractice claim. However, this is not what is meant by ongoing harm; if it were, every wrong would be ongoing, until it was made right. In Davis v. Thornburgh, 903 F.2d 212, 220 (3d Cir. 1990), the Third Circuit held that a biological mother whose parental rights had been terminated lacked standing to challenge the constitutionality of the Pennsylvania Adoption Act. The fact that the state was preventing her from having a relationship with her child did not meet the "ongoing harm" requirement. The only harm that was cognizable in that case was the allegedly unconstitutional termination of the plaintiff's parental rights and that happened in the past; similarly, in this case, the cognizable harm is the denial of the plaintiffs' right to a jury trial and that is not ongoing.

The plaintiffs argue in their opposition to the

defendant's motion that "the likelihood of repeat violations by this defendant are real and not conjectured as defendant would have this Court believe," and that it was "not unforeseeable" that they would again be denied their right to a jury trial by Judge Tereshko. However these arguments are wholly unsupported and, this Court presumes, speculative. In sum, this Court is barred from awarding the forward-looking declaratory relief the plaintiffs seek, because such relief would not redress their injuries, all of which occurred in the past.

An appropriate order follows.

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FEMI KASALI and
SANDRA KASALI

CIVIL ACTION

:
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v.

HONORABLE ALLAN L. TERESHKO

:

NO. 01-CV-4043

ORDER

AND NOW, this 13th day of March, 2002, upon consideration of the Defendant's Motion to Dismiss (Docket #3) and all responses and replies thereto, it is hereby ORDERED and DECREED that the defendant's motion is GRANTED for the reasons stated in a memorandum of today's date.

BY THE COURT:


Mary A. McLaughlin, J.

3/13/02 to:
J. Taylor Williams, Esq.
M. Boyce, Esq.

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C M L JUDGMENT

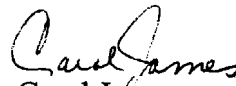
Before the Honorable Mary A. McLaughlin:

AND NOW, this 13th day of March, 2002, in accordance with the Memorandum
and Order of March 13, 2002,

IT IS ORDERED that Judgment be and the same is hereby entered in favor of
Defendant Honorable Allan L. Tereshko and against Plaintiffs Femi Kasali and Sandra Kasali.

BY THE COURT

ATTEST:


Carol James
Deputy Clerk

3/13/02 to :
Taylor Williams, Esq.
K. Boyce, Esq.

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